
UNITED STATES OF AMERICA

v.

DAVID MATTHEW HICKS

)
)
)
)
)
)
)
)
)
)

**MOTION FOR
DOCKETING**

27 July 2004

Part I - Request for Trial Date

1. The Prosecution will be prepared for trial and ready to begin its case on the merits on 28 September 2004.
2. The Prosecution estimates that it shall take approximately ten (10) days to present its case on the merits, and one (1) day on sentencing if sentencing proceedings are required.
3. The Prosecution intends to furnish all information to the Defense, to include the names of witnesses that Commission Law requires, not later than 18 August 2004.
4. The Prosecution does intend to request that Protected Information be presented, and if the request is granted, that the presentation of such information shall take approximately one (1) day (such day already included in the calculation in paragraph 2 above.)
5. In determining a trial date, and on behalf of all counsel for the Prosecution in the above styled case, the Prosecution requests that the Presiding Officer consider the following events that would significantly interfere with counsels' being in trial:

Counsel
None

Dates

Significant Event

6. Other information that may be of use to the Presiding Officer in the docketing of this case: None.

// signed //

NAME REDACTED

Lieutenant Colonel, U. S. Marine Corps
Prosecutor

Revised: The names of prosecutors were redacted at the request of the Office of Military Commissions.

Part II - Defense Response to Docketing Request

1. The Defense (select one option below):

____. Is prepared to begin its case on the merits after the conclusion of the Prosecution's case as indicated in Part I above.

____. Requests that the trial begin on a date earlier than that requested by the Prosecution for the following reasons (be specific):

X. Requests a delay in the beginning of the trial until **10 January 2005** for the following reasons (be specific):

At the present time, the defense has not received complete discovery. I anticipate the defense and the government will resolve most of this without motions. But it is taking time for the information to be collected or provided to the government by other agencies. Some of the major information the defense is waiting on or working at obtaining is:

- a. List of investigators involved in our case.
- b. Access to the records maintained by GTMO on regarding Mr. Hicks.
- c. Access to speak to any other detainee held by the United States.
- d. Interviewing several individuals held in U.S. Federal facilities.
- e. Information regarding combat operations within Afghanistan.

Of course, obtaining this evidence will lead to the need to conduct interviews and follow-up investigation.

The defense has to accomplish investigations in Kosovo, Afghanistan, Australia and Pakistan to speak to identified witnesses and attempt to locate additional witnesses. This foreign country travel is time consuming and difficult to arrange especially in Afghanistan where coordination must be accomplished with the Combat Command. Also, once the investigation is complete, we need to arrange for the production of those witnesses, which will likely be a daunting task that will occupy a significant amount of time.

The defense has been seeking additional counsel since January 2003; Major Lippert will be assigned on 9 August and must travel from Germany to begin his getting up to speed on the case.

This is a new and evolving process, without any specific rules or procedures. Also, the number of agencies involved, and the logistics of addressing issues for which there are substantial distances between the parties involved, makes speedier preparation impossible. For example, the defense requested to review an original copy of provided discovery that was illegible held at GTMO. During our last visit, the evidence could not be found so I will try to accomplish the review this time. What typically would take a few hours to visit a client requires a visit to GTMO that takes at least a few days.

Revised: The names of prosecutors were redacted at the request of the Office of Military Commissions.

2. As of this date, without sufficient time to investigate, access to all evidence and potential witnesses, the Defense can not estimate a case on the merits or sentencing.
3. The Defense can not provide notice of the intent to request that Protected Information be presented until a complete investigation is completed.
4. The defense can not provide notice of any affirmative defenses until a full investigation of the case is conducted.
5. (Optional): In determining a trial date, and on behalf of all counsel for the Defense in the above styled case, the Defense requests that the Presiding Officer consider the following events that would significantly interfere with counsel's being in trial. (Include all counsel detailed to the case):

<u>Counsel</u>	<u>Dates</u>	<u>Significant Event</u>
Major Mori	When ever	20 days use or lose leave prior DATE REDACTED
Mr. Dratel	Begins 8 Nov	Federal Trial; 4 to 6 weeks in court
Mr. Kenny	DATE REDACTED	Pre-paid family trip to LOCATION REDACTED

7. (Optional.) Other information that may be of use to the Presiding Officer in the docketing of this case:

The proposed dates below take into account Mr. Dratel's and Mr. Kenny's court schedule and other preparation for other cases.

DEFENSE PROPOSED COMMISSION SCHEDULE

19 Aug 04	Prosecution Discovery Due
19 Aug 04	Government Witness & Anticipated Exhibits List
Week of 23 Aug 04	Arraignment before the commission (GTMO)
09 Sep 04	Notice of Motions
16 Sep 04	Defense Witness Request & Anticipated Exhibits
23 Sep 04	Response to Witness Request
30 Sep 04	Motions Due
07 Oct 04	Response to Motions
Week of 18 Oct 04	Motion Hearing (GTMO)

Revised: The names of prosecutors were redacted at the request of the Office of Military Commissions.

8 Nov 04

Mr. Dratel begins a federal jury trial lasting approximately
4-6 weeks

10 Jan 04

Commission on the merits (GTMO)

8. The defense requests oral argument on this motion.

JOSHUA L. DRATEL
Civilian Defense Counsel

Part III - Prosecution Reply to Docketing Request

1. The Prosecution (select one option below):

a. If the Defense requested a trial date earlier than that requested by the Prosecution.

____ The Prosecution is prepared to proceed on the trial date requested by the Defense.

____ The Prosecution is not prepared to proceed on the trial dated requested by the Defense for the following reasons (be specific):

b. If the defense requested a trial date later than that requested by the Prosecution.

____ The Prosecution has no objection to the delay requested by the Defense.

X The Prosecution opposes to the delay requested by the defense because (be specific):

While the Prosecution has no specific conflict with the dates proposed by the Defense, we seek to have as little delay as possible and view the requested delay as unnecessarily long. Mr. Dratel's trial schedule in federal court is, of course, legitimate, but the subject case can and should be accomplished before his federal trial. The personal conflicts cited (the desire for Major Mori to take "use or lose" leave and for Mr. Kenny to go on a family vacation to Nepal) should not cause further delay in this case. We propose granting Defense delay to allow trial on the merits to commence no later than 18 October 2004 (21 days prior to the start of Mr. Dratel's federal trial). If a motions hearing is necessary, we recommend the week of 27 September 2004.

The Defense already has a significant portion of the discovery available in this case (we have provided 1,573 items, including either hard-copy pages or CD-ROMs containing documents, photographs, etc.). Furthermore, the Prosecution continues to intend to provide any remaining information required by Commission Law (recognizing our continuing discovery obligation) to the Defense by 18 August 2004, two months prior to our proposed trial date. This should provide ample time to complete preparations, especially given that there are now four counsel working on the case for the Defense, to include two military counsel whose sole duty is to represent Mr. Hicks. In fact, Major Mori's sole duty has been the representation of Mr. Hicks since December 2003, in which time he has visited his client numerous times and traveled extensively on behalf of his client.

//Signed//

NAME REDACTED

Lieutenant Colonel, U. S. Marine Corps
Prosecutor

Revised: The names of prosecutors were redacted at the request of the Office of Military Commissions.

Part IV - Decision of the Presiding Officer

Revised: The names of prosecutors were redacted at the request of the Office of Military Commissions.